

Addendum to the joint Civil Society Submission to the UN Human Rights Committee in relation to its follow-up procedure on Cambodia by the Cambodian Center for Human Rights (CCHR) in cooperation with the Centre for Civil and Political Rights (CCPR Centre)*

14 June 2016

Actions taken by the State Party to implement the Committee's recommendations on freedom of expression and association (para. 21, CCPR/C/KHM/CO/2)

**This submission provides additional information and updates to the submission first made by CCHR and CCPR Centre on 18 May 2016, in addition to the corrigendum below, and should be read in conjunction with that submission.*

CORRIGENDUM: In the submission first made by CCHR and CCPR Centre it is stated that the six human rights defenders were charged on 2 May 2016. CCHR and CCPR have since obtained information that in actual fact the individuals were indicted on 02 May, and have yet to be charged.

Since CCHR and CCPR Centre made their first submission to the Committee on 18 May 2016, events have moved quickly and the political situation has remained tense. On Monday 6 June 2016, a further seven people were arrested for attempting to carry out a "Black Monday" protest opposing the arrests and continued detention of four ADHOC activists and a National Election Committee (NEC) staff member detained on 8 May 2016. They were released the same evening. The detained ADHOC and NEC staff were denied bail by the Appeal Court on 13 June 2016.

As the updates below indicate, the events described in the previous submission form part of a larger, ongoing crackdown on civil society, which has been carried out by the RGC over recent months.

Additional information on the Implementation of the Committee's recommendations in para. 21 of its Concluding Observations on Cambodia (CCPR/C/KHM/CO/2):

"The State party should ensure that everyone can freely exercise his or her right to freedom of expression and association, in accordance with articles 19 and 22 of the Covenant and the Committee's general comment No. 34 (2011) on freedoms of opinion and expression. In doing so, the State party should: ..."

(a) "Take immediate action to investigate complaints of killings, and provide effective protection to journalists, human rights defenders and other civil society actors, who are subjected to intimidation and attacks due to their professional activities"

Impunity for those who issue threats, harass, attack, or even murder journalists, human rights defenders and other civil society actors continues to be a grave problem in Cambodia. The RGC has not taken adequate action to ensure such crimes are appropriately investigated and the perpetrators brought to justice. Such impunity creates a chilling effect on the exercise of freedom of expression and association in Cambodia, as civil society actors carry out their activities subject to a continuing threat of intimidation and personal violence.

Failure to address issues raised in the Committee's Concluding Observations in March 2015

13 journalists have been killed for their work in Cambodia since 1994, with the most recent case occurring in October 2014.¹ The failure to adequately prevent and investigate such murders not only

¹ An interactive map containing profiles of each of the journalists who have lost their lives is available via CCHR's human rights portal, www.sithi.org.

constitutes a threat to freedom of expression in Cambodia, but puts the State Party in breach of its obligations under Article 6 ICCPR, which guarantees each individual the inherent right to life.

Despite the recommendation of the Committee, the RGC has failed to take action to investigate such attacks. Regarding the case of Lay Samean, a reporter from Voice of Democracy, was beaten and left unconscious in the street in May 2014 upon attempting to take photographs of security guards chasing a monk at a rally held by opposition party supporters at Phnom Penh's Freedom Park², Cambodian Center for Independent Media ("CCIM") filed a lawsuit for damages against the officials responsible for the security guards, requesting compensation for medical expenses, but the Phnom Penh Municipal Court dismissed the case without any explanation. No other criminal investigation by police or the judiciary has been conducted, despite widespread condemnation.

New developments

Since March 2015 there have been new incidents of harassment and violence against journalists and other civil society actors, for which no perpetrators have yet been held accountable. On 6 August 2015, two reporters from Voice of Democracy ("VOD"), an entity of CCIM, were attacked by Daun Penh district security guards in Phnom Penh. They were reporting on Boeung Kak community members that were demonstrating in front of the City Hall with regard to land rights. The reporters were harassed and threatened with having their equipment seized while trying to interview demonstrators.

On 26 October 2015, two opposition lawmakers were dragged from their cars and viciously beaten as they attempted to exit the National Assembly compound during a protest demanding the removal of deputy opposition leader Kem Sokha as the Assembly's vice president. Three members of Prime Minister Hun Sen's personal bodyguard unit were found guilty of aggravated intentional violence but were handed suspended sentences that will see them released in less than six months. The trial was widely considered to be a cover-up by the ruling authorities, with the real perpetrators of the attacks remaining unaccountable.

Trade unions and labour movement in have been subjected to increasing intimidation and attacks since March 2015, with the tolerance or even apparent complicity of the authorities. Late 2015 and 2016 has seen an escalating crackdown on trade unions, marked by a series of incidents demonstrating the authorities' tacit support for the use of violence against legitimate demonstrators and the suppression of independent trade unions.

One incident was the brutal attack on employees of Capitol Tours during a protest, the perpetrators of which have yet to be held accountable. During the period leading up to 8 December 2015, Capitol Tours dismissed 45 employees after they supported and attempted to form a union. The dismissed bus drivers and other activists have since sustained a prolonged protest against Capitol Tours. On 6 February 2016, at approximately 9.40 am, around 50 of the protestors were violently attacked by a mob of tuk-tuk drivers – understood to be associated with the Cambodia for Confederation Development Association ("CCDA"). CCDA has a history of demonstrating against civil society groups at the request of City Hall and businesses in return for lucrative contracts. The attack, which left at least 14 people injured, including protesting bus drivers, one human rights monitor and one police officer, was captured in video footage by human rights monitors, and shows the tuk-tuk drivers attacking the protestors with sticks, metal bars and hammers and a knuckleduster. During the attack the police failed to take any meaningful action to intervene and there are even suggestions that some police officers actually participated in the violence. While victims of the attack have been arrested, the perpetrators of the violence have been allowed to enjoy total impunity.

² Lay Samean sustained head injuries and a broken cheekbone, necessitating his travel to Bangkok for surgery, costing US\$30,000, and his vision has been permanently affected.

Similar incidents took place on 1 February 2016 at the Star Light Apparel factory in Kandal province, when protesters were attacked by security guards and groups of armed thugs; and on 12 January 2016 at the Agile Sweater Factory in Kampong Speu, when individuals associated with the Collective Union Free Khmer Worker, which is closely aligned with the Agile Sweater Factory, are reported to have attacked the protestors with sticks and metal pipes.

(b) “Refrain from prosecuting journalists, human rights defenders and other civil society actors as a means of deferring or discouraging them from freely expressing their opinions”

Failure to address issues raised in the Committee’s Concluding Observations in March 2015

The use of threats of arrest, charge or imprisonment against prominent opposition leaders is a well-documented tactic utilised by the RGC. Besides the case of Mr. Sam Rainsy³, other investigations or prosecutions of civil society actors that were ongoing at the time of the review of Cambodia by the Committee have also continued to be pursued by the RGC, contrary to the Committee’s recommendation. Spanish activist Alex Gonzalez-Davidson, the founder of the environmental group, Mother Nature, has since been forced to leave the country, in what appears to be an attempt to put a stop to his environmental and human rights activism in the Areng Valley, after immigration officials declined to renew his visa.

11 opposition activists, who were arrested between July and November 2014 for allegedly instigating or involvement in violence linked to a demonstration at Freedom Park in Phnom Penh on 15 July 2014 to support a CNRP rally calling for an end to the ban on public gatherings in the park,⁴ were sentenced in 21 July 2015 to lengthy jail terms, ranging between 7 and 20 years. No credible evidence supporting the claim that the defendants had planned an “*insurrection*,” or that any of the 11 had themselves committed acts of violence, was produced during the trial.

New developments

Since the Committee’s recommendations were issued, RGC has increasingly engaged in new incidents of intimidation of human rights defenders and civil society actors, most recently through the arrest and detention of current and former ADHOC staff members in relation to the Kem Sokha case.⁵

These individual cases, also appear to form part of a broader, deliberate effort by the RGC to crack down on dissenting voices ahead of the upcoming commune and general elections in 2017 and 2018 respectively. The escalating attacks on trade union activities (see section 1.B. above) should also be viewed in this context. This escalation has not merely been characterised by the government’s failure to investigate and deter non-state actors from harassing labour activists, but also by attacks and judicial harassment of trade unionists initiated directly by the Cambodian authorities. On the same day as the attack on Capitol Tours workers, described above, four leaders of leading independent labor organizations, Cambodian Labour Confederation (“CLC”) President Ath Thorn, CLC General-Secretary Kong Athit, Cambodian Informal Economy Workers Association (CIWA) President Sok Chhun Oeung, and Cambodian Transport Workers Federation (“CTWF”) Secretary Eang Kim Hun, were also charged with intentional violence, obstructing public officials and blocking traffic. None of these four leaders were even present during the incident, suggesting that this was a case of judicial harassment designed to intimidate the trade union movement as a whole.

Similarly, in December 2015 in Bavet, Svay Rieng province, violence erupted as the government authorities suppressed garment worker protests in the Manhattan and Tai Seng Special Economic Zones. Over 600 provincial and military police were deployed to crackdown on the protest. On 21

³ see previous submission of 18 May 2016

⁴ The peaceful protest escalated into violence with clashes occurring between Daun Penh district’s security guards and protestors taking part in the violence.

⁵ See detailed description and analysis in submission of 18 May 2016

December 2015, police violently dispersed 8,000 protesting workers by using water cannon, and arrested 58 workers before releasing them later on that day after they had agreed to not engage in any further protests. Eleven garment workers and truck drivers have been arrested and charged with offenses of damage, intentional violence and incitement for their involvement in these protests.

(c) “Consider decriminalising defamation and bring any other relevant provisions of the Criminal Code into line with article 19 of the Covenant” (para. 21 (c), CCPR/C/KHM/CO/2)

The Criminal Code, including the crime of defamation, continues to be employed abusively to intimidate and silence critical voices. Since the Committee issued this recommendation, no moves have been made to consider decriminalising defamation, and the offense continues to be regularly employed by the government against those who express opposition. Articles 305 and 307 of the current Penal Code, adopted in 2010, outline the definitions of public defamation and public insult, respectively. Under both articles, the commission of an offence merely requires that the defamation or insult be made “*in writing or sketches by any means whatsoever*” and for it to be “*circulated in public or exposed to the sight of the public.*” The latter half of the clause implies that individuals may be prosecuted for private conversations that may end up being later made public without the individual’s consent.

In addition to the crime of defamation, a number of other provisions of the Criminal Code constitute unjustified, disproportionate restrictions on the right to freedom of expression, in clear violation not only of Article 19 ICCPR, but also of Article 41 of Cambodia’s Constitution. A charge under Article 495, “*Incitement to Commit a Crime*” does not on its face require a crime to actually take place as a result of the incitement in question – merely that the act creates “*turmoil in society.*” Article 496, on “*Incitement to Discrimination*” follows the same pattern. Both articles carry with them the supplementary punishment of suspension of “*certain*” unspecified “*civil rights.*” The vagueness of this drafting gives both the judiciary and executive branches of government much leeway in what civil rights they can take away – which could potentially include the right to vote.

Article 502 broadly criminalizes contempt, and applies to “*the use of words, gestures, writings, sketches or objects which undermine the dignity of a person...*” The elements of the crime are vague and highly subjective – taken to the extreme, the practical effect of the provision is to criminalize all acts which hurt the feelings of public officials. Article 523 clashes almost directly with Article 39 of the Constitution as it criminalizes the criticism of a judicial act or decision. This has the effect of severely limiting the ability of the public to comment negatively on any decision by the government..

There have been no moves either initiated or announced by the RGC to review these provisions and bring them in line with Cambodia’s obligations under the Covenant.

(d) “Review its current and pending legislation, including the draft laws on cybercrimes and on associations and non-governmental organizations, to avoid the use of vague terminology and overbroad restrictions, to ensure that any restrictions on the exercise of freedom of expression and association comply with the strict requirements of articles 19 and 22 of the ICCPR”

Law on Associations and Non-Government Organisations (“LANGO”)

On 13 July 2015, the National Assembly adopted the draft LANGO with minor amendments, despite the boycott of the session by the opposition and the widespread call to halt the legislative process and hold meaningful consultations with all relevant stakeholders, or reject the law. The LANGO was approved by the Senate on 24 July 2015 without any further discussion and finally promulgated by the King on 12 August 2015.

As noted in the submission of 18 May 2016, the text contains deeply worrisome provisions with regard to the imposition of mandatory registration, as well as onerous registration requirements, reporting obligations, and broad and vague grounds for denial of registration and deregistration. The LANGO prescribes mandatory registration for all associations and NGOs, not only in order to be

recognized as a legal entity, but to conduct any activity whatsoever. Cambodian associations and NGOs must register with the Ministry of Interior (“MOI”), while foreign entities must discuss and agree on all projects with an unspecified public authority, before submitting a request to enter into a memorandum of understanding with the Ministry of Foreign Affairs and International Cooperation (“MOFAIC”). These provisions allow the authorities to exercise highly invasive powers over the activities of civil society organizations (“CSOs”). Furthermore, the text of the law is sufficiently vague to cause significant confusion regarding its application to community-based organizations (“CBOs”) and other informal movements.

Article 24 of the LANGO also requires, under threat of de-registration, neutrality vis-à-vis political parties for all foreign associations and NGOs, as well as for domestic NGOs. This vague provision, which does not apply to domestic associations, leaves space for serious violations of freedom of association by authorities in order to silence dissent and criticism. Temporary suspension and deletion of CSOs from the register due to non-compliance with reporting requirements carries further risks of abuse. The suspension or deletion of CSOs for actions contrary to the statute equates to an unnecessary interference in issues internal to CSOs. Finally, in a deeply concerning provision, Article 30 states that the MoI must delete from the list of registered organizations domestic associations and NGOs conducting activities adversely affecting public security, peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society, leaving room for the arbitrary deletion of CSOs. Significant administrative sanctions are also imposed on associations and NGOs that conduct activities without registration or continue their activities despite suspension/deletion.

Draft Cybercrime law

In late May 2015, the Minister of Posts and Telecommunications announced that the Cybercrime Law was still under consideration, and that the law would include criminal sanctions for *“people with bad intentions”* who *“criticize the government”*. The RGC has refused to publicly release an official version of the draft, and the last version seen by civil society is a leaked draft dating from autumn 2015. The highly controversial draft law contains several provisions, which, if passed, could severely restrict freedom of expression online, and are likely to result in self-censorship and, contrary to the Committee’s recommendation, contain overly broad and vague terminology. The comments by the Minister of Posts and Telecommunications suggest that these provisions, if adopted, would likely be employed in a manner that would unacceptably restrict the exercise of freedom of expression.

Of particular concern is Article 28, which prohibits publications on a number of vaguely defined grounds and provides for heavy prison sentences and fines. Some of the most problematic provisions seek to prohibit content deemed to *“generate insecurity, instability and political incohesiveness”* (Article 28(3)) or *“deemed damaging to the moral and cultural values of the society”* including *“manipulation, defamation, and slanders”* (Article 28(5)(c)). Article 28(4), which prohibits content *“undermining the integrity of any governmental agencies”* could hinder the ability of civil society to monitor the RGC’s activities as well as serve to silence activists and political opposition. Moreover, Article 35 includes *“dissolution”* as an accessory penalty for legal entities – which would include civil society organizations – that commit offenses under Articles 21 to 32, and places an inadequate restriction on freedom of expression. Finally, the proposed inclusion of predominantly high-ranking members of the government in the National Anti-Cybercrime Committee (the “NACC”), as outlined in Article 6, will not lead to the creation of an independent review institution for internet usage.

In response to the outrage expressed over the release of the first draft, a second Cybercrime Draft Law was leaked to certain NGOs from the Ministry of Interior in September and October 2015. The second draft is very clearly a ‘working draft.’ Indeed, some articles are copied directly from the Council of Europe’s Convention on Cybercrime, and at least one article – Article 25 – references article numbers that do not correspond to articles in the Draft, but rather to articles in the first draft

Cybercrime Law, which has led to questions regarding the reliability of the document. Moreover, this method of leaking both drafts to selected organizations is no replacement for an open and consultative legislative process, which takes the concerns of the general public and civil society into account in a transparent manner. Although the second leaked draft removed some of the most troubling provisions contained in the first draft - such as the creation of the NACC - it nonetheless contains new provisions which also threaten digital rights. Article 27 allows for the dissolution of legal entities - including NGOs - on the basis of the 'cybercrimes' of individuals affiliated with the organizations. Additionally, the draft confers overly broad and intrusive powers upon police and investigators to search and seize the property of those suspected of 'cybercrimes', with a complete lack of judicial oversight and procedural safeguards, threatening the right to privacy and the right to freedom of expression. The individual crimes enumerated in the draft are very broadly defined, and would give significant scope to the RGC to implement the law abusively against its perceived opponents, in violation of national and international human rights guarantees. For example, Article 13(1) criminalizes obtaining data that "...are considered to be confidential and which are specifically protected against unauthorized access..." There is no intent element; a person may be imprisoned for receiving an email containing such data, even if that email was sent by mistake or the receiver did not know that he did not have permission to view it. Finally, most of the crimes enumerated in the second draft are duplicative, and can already be punished under the criminal code, calling into question the need for a Cybercrime Law at all.

New Trade Union Law (TUL)

The process leading to adoption of this law by the National Assembly on 4 April 2016 was characterized by a worrying lack of transparency and absence of adequate consultation with stakeholders. First proposed in 2011, a draft was released in October 2014, when civil society and international actors expressed serious concerns about a number of the law's provisions. Since then, no updated draft was made available to the public, with only limited statements from the Ministry of Labour in September 2015 providing information on further proposed revisions, thus limiting the ability of stakeholders to participate in the democratic process or comment meaningfully on the new provisions.

As adopted, the Trade Union Law is not consistent with the requirements of Cambodian domestic law, nor with Cambodia's obligations under international law, in particular the right to freedom of association, including the right to form and be a member of trade unions.

Under the TUL, registration is necessary in order for a union or employer association to function: otherwise it is unable to enjoy the rights and benefits provided for in the law (Article 11), or to have legal personality, and will be "*considered to be illegal*" (Article 14). This restriction is exacerbated by the onerous nature of the registration process, and the opaque procedures for approval or rejection of applications by the Ministry of Labor.

In order to maintain its registration - and thus continue to function - a union or employer association must comply with a variety of burdensome reporting requirements (Article 17), including the annual provision of financial statements and activity reports, based on the union's financial records, detailing all income and its sources; expenditure; activities; and number of members; and the updating of any of the information required for registration (with the exception of changes in membership) within 15 days of any change. If these requirements are not complied with, the Ministry of Labor may apply to the Labor Court for revocation of the union's registration (Article 18 and 19). Onerous reporting obligations of this nature not only distract resources from the pursuit of the union's primary, legitimate function of promoting and protecting the labor rights and interests of its members, but also creates potential for abuse, as failure to comply may be claimed as justification for revocation of a union's registration and its consequent inability to function lawfully.

Even if a union or employer association successfully complies with the registration and reporting requirements above, it is possible for a union to be dissolved by the Labor Court under Article 29

TUL. This provision defines the potential grounds for dissolution in excessively vague and ambiguous terms that could easily be manipulated to cover a wide range of legitimate union activity, or to intimidate and harass union leaders. In particular, Article 29 provides that a union may be dissolved on the grounds that:

- establishment or activities of the union contravene the law or the objectives of the union or the as stated in the statutes;
- leaders, managers and those responsible for the administration were found of committing a serious misconduct or an offense in the capacity of the union or the employer association.

Finally, Article 65(f) provides that it is unlawful for a union “*to agitate for purely political purposes or for their personal ambitions or committing acts of violence at the workplace and other places.*” The consequences of such unlawful activity is not explained, but it is clear that such a broad, ambiguously-drafted provision constitutes a serious threat to the ability of unions and their members to exercise their right to freedom of association. The subjective and vague terms “*purely political purposes*” and “*personal ambitions*” provide considerable scope for authorities to characterise a union’s activity as unlawful, leading presumably to revocation of registration, dissolution, prosecution of its leaders, or all three.

Further actions required by the Royal Cambodian Government

In addition to those recommendations contained in the previous submission of 18 May 2016, the RGC should:

- Submit Cambodia’s follow-up report to the Committee without further delay;
- Refrain from pursuing politically-motivated arrests, investigations and/or prosecutions of civil society actors, and ensure the immediate release of any such individuals presently detained;
- Ensure adequate consultation with civil society on the draft Cybercrime law and ensure that its provisions comply with all relevant human rights standards, in particular articles 19 and 22 ICCPR.